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Cases, Regulations, and Statutes

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that the discharge of indebtedness amount is taxed as ordinary income.[14] Moreover, the discharge of indebtedness amount is subject to self-employment tax if related to the operation of a trade or business or a trade or business investment in which the taxpayer materially participates. [15]

Involuntary repossessions

In the event a repossession is involuntary, with the remaining debt not cancelled, the secured lender may obtain a deficiency judgment for the balance, which complicates the handling of the transaction for income tax purposes. The issue of discharge of indebtedness is delayed until the deficiency judgment issue is resolved. If a deficiency judgment is satisfied out of the debtor's other property, the debtor has effectively conveyed additional amounts to the lender. In the event the deficiency judgment remains unsatisfied, the indebtedness involved remains uncancelled and undischarged until the deficiency judgment becomes uncollectible.[16]

Non-recourse debt

For non-recourse debt, where the value of the property is less than the unpaid balance of the debt, the amount realized on the asset portion of the transaction must be calculated by reference to the unpaid balance of the debt, rather than by reference to the fair market value of the property.[17] Indeed, the fair market property is ignored and there is no discharge of indebtedness income.

One disturbing aspect of non-recourse debt treatment is that IRS has taken the position that a debtor in bankruptcy may encounter non-recourse debt treatment (even though the obligation was originally recourse) where property subject to the debt is abandoned to the debtor with the secured creditor able to acquire the abandoned property to satisfy the debt.[18] In that instance, the entire difference between the income tax basis of the property and the debt involved is taxed as gain.

FOOTNOTES

[1] See generally 5 Harl, *Agricultural Law* § 39.02 (2003); Harl, *Agricultural Law Manual* § 4.02[13][c] (2003).

[2] I.R.C. ◊ 1038. See 5 Harl, *supra* note 1, § 39.05[1]; Harl, *supra* note 1, § 4.02[12][a].

[3] See note 1 *supra*.

[4] I.R.C. § 108.

[5] I.R.C. § 108(a)(1)(A).

[6] I.R.C. § 108(a)(1)(B).

[7] I.R.C. § 108(a)(1)(C).

[8] I.R.C. § 108(a)(1)(D).

[9] I.R.C. § 108(e)(5).

[10] UCC § 9-504-4. See 13 Harl, *Agricultural Law* § 18.04 (2003).

[11] See note 17 *infra* and accompanying text.

[12] See notes 5-9 *supra*.

[13] See Ltr. Rul. 9120010, Feb. 14, 1991. See also Gehl v. Comm'r, 95-1 U.S. Tax Cas. (CCH) ¶ 50,191 (8th Cir. 1995).

[14] I.R.C. § 61(a)(12).

[15] See Rev. Rul. 76-500, 1976-2 C.B. 254 (cancellation of part of FmHA emergency loan).

[16] Cf. Ryan v. Comm'r, T.C. Memo. 1988-12, *aff'd*, 873 F.2d 194 (8th Cir. 1989) (accrual basis limited partners realized income from discharge of indebtedness in taxable year appeal of foreclosure action completed, not year of foreclosure sale).

[17] See Commissioner v. Tufts, 461 U.S. 300 (1983); Newman v. Comm'r, T.C. Memo. 1990-230; Rev. Rul. 82-202, 1982-2 C.B. 36; Ltr. Rul. 9302001, Aug. 31, 1992 (difference between property basis and debt is gain; no discharge of indebtedness income).

[18] Ltr. Rul. 8918016, Jan. 31, 1989 (unsecured portion of debt discharged in bankruptcy).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

ELIGIBILITY. The Chapter 12 debtor owned a farm on which the debtor grew various crops and fruits. The debtor operated the farm as an S corporation which leased the land from the debtor. The debtor's pre-petition farm income was entirely from the rent paid by the corporation. If the corporation had insufficient income to pay the rent, no rent was paid. After filing for Chapter 12, the debtor operated the farm as a sole proprietor. A creditor argued that the debtor did not qualify for Chapter 12 because the rent payments were not income from farming because the corporation and not the debtor operated the farm. The court reviewed the three approaches to farm rental income as determined by In re Armstrong, 812 F.2d 1024 (7th Cir. 1987) (rental income must be subject to risks of farming to be income from farming); Matter of Burke, 81 B.R. 971 (Bankr. S.D. Iowa 1987) (farm rental income determined by totality of circumstances as to whether debtors continued farming); and In re Creviston, 157 B.R. 380 (Bankr. S.D. Ohio 1993) (totality of circumstances includes risk from farming). The court held that the debtor rental income met the tests of all three approaches because (1) if the corporation did not have enough income, the debtor received less rent; (2) the debtor was actively involved in the farm operation; (3) the rent income came from farming operations; and (4) the debtor continued to farm the property after bankruptcy. The court held that the rent payments qualified as

farm income to the debtor. ***In re* Maynard, 295 B.R. 437 (Bankr. S.D. N.Y. 2003)**.

FEDERAL TAX

PROFESSIONAL FEES. The debtor completed a Chapter 11 reorganization and claimed a current deduction for the professional fees incurred during the bankruptcy. The IRS denied the deductions and claimed that the fees had to be capitalized as long term improvements to the debtor's business. The court segregated the fees between those which applied to administration of the bankruptcy case and those which pertained to the operation of the debtor's business. The first set of expenses had to be capitalized and the second set were allowed as current business deductions. ***In re* Hillsborough Holdings Corp., 295 B.R. 679 (Bankr. M.D. Fla. 2003)**.

ENVIRONMENTAL LAW

CONTRIBUTION. The plaintiff city sued poultry processors who contracted with individuals for the raising of poultry near two lakes which provided much of the city's water supply. The plaintiff alleged that the application by the poultry farms of poultry litter on their land caused excess phosphorus to travel in waste water to the lakes, resulting in eutrophication of the lakes. The plaintiff sought cost recovery and contribution under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The court held that the plaintiff could not recover costs under 42 U.S.C. § 9607(a) because the plaintiff admitted that it contributed to the amount of phosphorus in the lakes. The court also held that the plaintiff was entitled to seek contribution under Section 9613(f). The defendant sought summary judgment on the issue that phosphate in the poultry litter was not a hazardous substance under CERCLA, but the court held that phosphate was a hazardous substance and denied summary judgment for the defendants on that issue. **City of Tulsa v. Tyson Foods, 258 F. Supp.2d 1263 (N.D. Okla. 2003)**.

FEDERAL AGRICULTURAL PROGRAMS

DISASTER PAYMENTS. The FSA has adopted as final regulations which would amend its regulations for the Disaster Set-Aside (DSA) program to provide the disaster set-aside more quickly to those who can benefit most from the program. DSA is a program whereby borrowers who are current or less than 90 days past due on all Farm Loan Program (FLP) loans, may apply to move the scheduled annual installment for each eligible FLP loan to the end of the loan term. The intent of this program is to relieve some of the borrower's immediate financial stress caused by a natural disaster. 68 Fed. Reg. 55299 (Sept. 25, 2003).

EXOTIC NEWCASTLE DISEASE. The APHIS has issued interim regulations amending the exotic Newcastle disease regulations by removing portions of Kern, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, California from the list of quarantined areas **68 Fed. Reg. 54797 (Sept. 19, 2003)**.

SUGAR. Summary by Roger A. McEowen. The plaintiffs were sugar beet growers who sued the CCC for money owed on sugar beets sold to a processor and for a declaration that their liens were superior to those of the CCC. The growers also claimed that the CCC failed to obtain adequate assurances from the processor that it would pay the growers. The trial court granted summary judgment to the CCC on the basis that 7 U.S.C. § 7284(d) gave the CCC's lien priority over both prior and subsequent liens. The court held that the use of the word "prior" in describing crop liens, but not in describing liens against refined sugar was insufficient to support the negative inference that only subsequent liens against refined sugar were inferior to the CCC's lien. Thus, the CCC had super priority as to liens (7 U.S.C. § 7301(b)(1) suspended 7 U.S.C. § 1421 until 2002) and the only recourse the growers had was to get the law changed by Congressional decree. **Bair Brothers, et. al. v. Pacific Northwest Sugar Company, LLC, et. al., No. 02-35462, 2003 U.S. App. LEXIS 19266 (9th Cir. Jun. 6, 2003)**.

WETLANDS RESERVE PROGRAM. Summary by Roger A. McEowen. The plaintiff sold a conservation easement to the federal government on 1,812 acres so that the property could be enrolled in the Wetlands Reserve Program. Before the conveyance, the government informed the plaintiff that the conservation plan would cost about $80,000 to implement. The actual plan turned out to cost almost $500,000. The plaintiff objected to the plan, but the government claimed that the plaintiff's approval to the plan was not necessary and began implementing the plan. The appellate court affirmed the trial court and held that 16 U.S.C. § 3837a did not require the plaintiff's consent to the conservation plan, only the plaintiff's agreement to implement a conservation plan. The court held that by giving the government the right to undertake "any" restoration activities, the plaintiff agreed to the conservation plan and no other agreement was required under law or applicable regulations. **Big Meadows Grazing Assoc. v. United States, No. 02-35764, 2003 U.S. App. LEXIS 19002 (9th Cir. Sept. 15, 2003)**.

FEDERAL ESTATE AND GIFT TAXATION

GIFTS. The taxpayer and spouse formed a limited partnership and assigned a portion of the taxpayer's limited partnership interest to a trust. The taxpayer filed a gift tax return with a value for the transferred limited partnership interest. The assignment agreement provided that if the value of the gift was determined by a court or other authority to exceed a certain value, the excess property was to be deemed as not included in the

assignment. The IRS ruled that, under *Commissioner v. Procter, 142 F.2d 824 (4th Cir. 1944)*, the provision was invalid as against public policy. **T.A.M. 200337012, Sept. 17, 2003**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent's estate elected to pay the estate tax by installments; however, the estate failed to make all of the initial interest payments and did not make the first installment payment of taxes. The estate property became subject to a foreclosure order and was sold. The default on the tax and interest payments and the foreclosure sale, both occurred more than 10 years before the IRS filed a suit to enforce its lien on the estate property for the entire unpaid estate tax. The estate argued that the 10 year statute of limitations of I.R.C. § 6502(a) began to run from either the date of the first default or the date of the foreclosure sale. Under I.R.C. § 6503(d) the election to pay estate tax in installments tolls the statute of limitations until the installment election deferment period expires. The court held that the default on the interest and tax payments did not automatically end the deferment period but required notice and demand from the IRS for full payment of the estate tax. The court also held that the estate failed to provide sufficient evidence, for summary judgment purposes, that the foreclosure sale involved more than 30 percent of the estate property, resulting in a cessation of the deferment period. **United States v. Askegard, 2003-2 U.S. Tax Cas. (CCH) ¶ 60,468 (D. Minn. 2003)**.

FEDERAL INCOME TAXATION

ABANDONMENT LOSS. The taxpayer operated a painting business and purchased trucks and other equipment for a multi-state contract. The equipment was eventually stored in a lot and some of the equipment was sold. The taxpayer claimed a loss deduction for the unsold equipment as abandoned; however, the taxpayer did not provide any records of the equipment stored in the lot, the equipment sold, the income tax basis of the equipment abandoned, or any affirmative act of abandonment; therefore, the abandonment loss deductions were denied. **Maintenance, Painting & Construction, Inc. v. Comm'r, T.C. Memo. 2003-270**.

CAPITAL EXPENSES. The taxpayers leased a store in a shopping mall. The taxpayers had to make substantial improvements in order to use the space for a bakery, including ceilings, walls and floors; ventilation systems, utility systems, safety and handicapped facilities; and general remodeling of the space. The improvements, except bakery equipment were to become the property of the landlord upon installation. The lease abated the rent for the first six months. The taxpayers claimed that the cost of the improvements was offset as rent payments. However, the six months of rent totaled only $18,000 and the remodeling expenses exceeded $127,000. The court held that the remodeling expenses were capital expenses except to the extent of the value of the six months of free rent. The taxpayers were not allowed an expense method depreciation deduction because no election was made on the original returns. The appellate court affirmed in a *per curiam* decision designated as not for publication. **McGrath v. Comm'r, 2003-2 U.S. Tax Cas. (CCH) ¶ 50,663 (5th Cir. 2003), *aff'g*, T.C. Memo. 2002-231**.

CORPORATIONS

DIVIDENDS. The IRS has issued guidance to brokers and individuals regarding provisions in the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the JGTRRA), Pub. L. No. 108-27, 117 Stat. 752, that affect information reporting for payments in lieu of dividends (sometimes called "substitute payments"). The IRS will exercise its authority under section I.R.C. § 6724(a) to waive penalties under Sections 6721 and 6722 for information returns with respect to calendar year 2003 payments if a broker makes a good faith effort to satisfy its information reporting obligations in a way that is consistent with the statutory changes effected by the JGTRRA. The IRS has revised the instructions to the 2003 Form 1099-MISC to require brokers to report payments in lieu of dividends to individuals in Box 8 of Form 1099-MISC. The IRS expects to revise Rev. Proc. 2003-28, I.R.B. 2003-16, 759, to allow brokers to furnish composite substitute payee statements for Forms 1099-DIV, "Dividends and Distributions," and Forms 1099-MISC, reporting payments in lieu of dividends, as well as other information returns. If a payment in lieu of dividends is reported as dividend income on a 2003 Form 1099-DIV, the taxpayer receiving the form may treat the payment for tax purposes as a dividend, and not as a payment in lieu of dividends, unless the taxpayer knows, or has reason to know, of the actual character of the payment. The IRS expects to amend Treas. Reg. § 1.6045-2 to reflect the statutory changes effected by the JGTRRA regarding payments in lieu of dividends. The IRS also expects to amend the regulations to provide new rules for brokers to use to determine which shares are loanable and to permit brokers to use a new hierarchical method to allocate transferred shares to new pools of loanable shares. The amendments are expected to be applicable to dividends received on or after January 1, 2003. **Notice 2003-67, I.R.B. 2003-40**.

COURT AWARDS AND SETTLEMENTS. The taxpayer was a member of a law firm which decided to reduce its employees. The law firm offered a severance package which include retirement benefits. The taxpayer rejected the severance package and entered into negotiations for an increased retirement benefit. The negotiations lasted over 2.5 years. During that time, the taxpayer began psychotherapy for depression. The taxpayer did not make any claim for personal injury in the negotiations until learning of the possible tax benefit from allocating a portion of any settlement to personal injury claims. The final employment termination settlement included money for personal injuries. The court held that the settlement proceeds were included in the taxpayer's income because the proceeds for the personal injury claims resulted from the negotiations and not from any enforceable personal injury claim. **Knoll v. Comm'r, T.C. Memo. 2003-277**.

DISASTER LOSSES. The IRS has announced tax filing extensions for residents in the presidential disaster areas that were

struck by Hurricane Isabel, which began on September 18, 2003, including the District of Columbia and parts of Delaware, Maryland, North Carolina and Virginia, which the Federal Emergency Management Agency has declared eligible for individual assistance. The affected individual and business taxpayers are provided additional time to file and pay certain taxes and extra time to make federal tax deposits. Affected taxpayers include individuals and businesses located in the disaster area, those whose tax records are located in the disaster area, and relief workers. The same relief will also apply to any counties added to the presidential disaster area. The extension date to file or pay taxes is November 18, 2003, except for federal tax deposits for which the extension date was September 29. The designated period for extensions is September 18 through November 18, 2003. The disaster designation for this area is "Hurricane Isabel," and taxpayers must mark certain relief-related forms with this designation. **IR-2003-112**.

EMPLOYEE BENEFITS. The taxpayer was a corporation which manufactured and sold a printing press attachment. The taxpayer held an annual fishing trip which was attended by employees, although not all employees attended. The fishing trip was planned so as to encourage employees to freely discuss the manufacturing and sales business and included formal meetings as well as informal conversations during the fishing activities. The trial court found that the employees spent from one to three hours each day discussing taxpayer business. The IRS assessed a deficiency of employment taxes based on the value of the fishing trip as recreation expenses for the employees. The IRS sought a summary judgment that the assessment was proper because the taxpayer could not meet the standards of I.R.C. § 274. The taxpayer argued that Section 274 did not apply because the taxpayer was not seeking a deduction for the trip expenses. The trial court held that the issue was whether the expenses were deductible by the employees because if the employees were entitled to deductions, the expenses would be ordinary and necessary business expenses and not wages from the taxpayer. The trial court initially held that summary judgment was not proper because assuming that the taxpayer could show that the fishing trips constitute ordinary and necessary business travel expenses, a material issue of fact remained regarding whether the taxpayer could meet the heightened standard set by I.R.C. § 274. *Townsend Industries, Inc v. United States, 207 F. Supp. 2d 931 (S.D. Iowa 2002)*. After presentation of the evidence at trial, the trial court found that "The trip was not an integral part of [the taxpayer's] employees' ability to perform their jobs, it was not a part or a continuation of a sales meeting, but rather was a relaxed and fun event where business was discussed as part of the background to the primary fishing endeavor." The trial court also found that the taxpayer failed to prove sufficient evidence to substantiate the business purpose of the trip. The court held that the costs of the fishing trips were wages subject to employment taxes. The appellate court reversed, holding that the evidence demonstrated a sufficient amount of business purpose for the trips from the business discussions which occurred as part of the trips. The court noted that several products had their beginnings in discussions at the trips. **Townsend Industries, Inc. v. United States, 2003-2 U.S. Tax Cas. ¶ 50,666 (8th Cir. 2003), *rev'g*, 2002-2 U.S. Tax Cas. (CCH) ¶ 50,697 (S.D. Iowa 2002)**.

The IRS has announced the applicable terminal charge of $34.66 and the Standard Industry Fare Level (SIFL) mileage rates for determining the value of noncommercial flights on employer-provided aircrafts in effect for purposes of the taxation of fringe benefits. The SIFL mileage rates for the period July 1, 2003 to December 31, 2003 are : 0-500 miles, $.1896 per mile; 501-1500 miles, $.1445 per mile; over 1500 miles, $.1390 per mile. The value of a flight is determined under the base aircraft valuation formula by multiplying the SIFL cents-per-mile rate applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in Treas. Reg. § 1.61-21(g)(7), and then adding the applicable terminal charge. **Rev. Rul. 2003-89, I.R.B. 2003-37**.

INTEREST RATE. The IRS has announced that, for the period October 1, 2003 through December 31, 2003, the interest rate paid on tax overpayments is 4 percent (3 percent in the case of a corporation) and for underpayments at 4 percent. The interest rate for underpayments by large corporations is 6 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 is 1.5 percent. **Rev. Rul. 2003-104, I.R.B. 2003**-39.

LIKE-KIND EXCHANGES. The taxpayers used a limited liability company as an intermediary in a deferred like-kind exchange. The taxpayers' son was a manager in the LLC but did not own any interest in the LLC. The taxpayers' attorney had provided legal services to the taxpayers and the LLC within the past two years but did not own an interest in the LLC. The IRS ruled that the LLC was not disqualified as an intermediary for the like-kind exchange because the son and attorney did not own an interest in the LLC. **Ltr. Rul. 200338001, June 11, 2003**.

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, were employed full time with a computer company. The taxpayers purchase limousin cattle for breeding and orally rented pasture land from a tenant on a farm. The tenant looked after the cattle on a day-to-day basis. The operation had two years of net operating losses which were denied by the IRS because the taxpayers did not materially participate in the cattle operation. The taxpayers argued that they met either the 500 hour participation test or the 100 hour test in which they participated more than any other person. See Treas. Reg. § 1.469-5T(a). The taxpayer presented trip logs prepared for trial to prove that they spent 777 hours in one year and 830 hours in the second year on the cattle operation. However, 296 hours in the first year and 244 hours in the second year occurred in the travel to and from the farm. The court held that the commuting times were not to be included as participation in the activity. The court also deducted time spent for recordkeeping, visiting cattle shows, correspondence, and other travel. After these deductions, the taxpayers had less than 500 hours of participation for each year

and did not meet the first test. Because the time spent did exceed 100 hours, the court examined the amount of participation of the tenant who cared for the cattle. The tenant testified to spending an average of 1.5 hours each day on the cattle, resulting in many more hours than the taxpayers. The court held that the losses from the activity were not deductible as passive activity losses. **Truskowsky v. Comm'r, T.C. Summary Op. 2003-130**.

RETURNS. The IRS has announced the publication on its web site of Form 706 and Instructions (Rev. August 2003), United States Estate (and Generation-Skipping Transfer) Tax Return. See www.irs.gov/formspubs/index.html. These publications can also be obtained by calling 1-800-TAX-FORM (1-800-829-3676).

SAFE HARBOR INTEREST RATES
October 2003

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	1.68	1.67	1.67	1.66
110 percent AFR	1.85	1.84	1.84	1.83
120 percent AFR	2.01	2.00	2.00	1.99
		Mid-term		
AFR	3.65	3.62	3.60	3.59
110 percent AFR	4.02	3.98	3.96	3.95
120 percent AFR	4.39	4.34	4.32	4.30
		Long-term		
AFR	5.23	5.16	5.13	5.11
110 percent AFR	5.76	5.68	5.64	5.61
120 percent AFR	6.29	6.19	6.14	6.11

Rev. Rul. 2003-107, I.R.B. 2003-39.

LABOR LAW

MIGRANT AND SEASONAL AGRICULTURAL LABOR. The plaintiffs were migrant agricultural workers recruited by the defendants, members of an agricultural association, in Puerto Rico for farm work in the United States. The plaintiffs alleged that the defendants violated the MSAWPA by failing to give each recruit written notice of the place and period of employment, the wage rate, the kinds of crops and kinds of activities each worker would be employed to perform, the housing and transportation arrangements, and the existence of a workers' compensation program or any other employment benefits. The plaintiffs also argued that 29 U.S.C. § 1821(g) required the written notices to be in Spanish because that was the common language of the recruits who were not fluent in English. The defendant argued that the notice was provided in various documents given to the recruits and to documents filed with the Puerto Rico Department of Labor. The defendant argued that the Puerto Rico Department of Labor was responsible for translating the documents. The court held that MSAWPA did not place responsibility for providing the information on anyone except farm labor contractors, agricultural employers and agricultural associations; therefore, the defendants violated the Act when the job information was not provided in writing in Spanish to the plaintiffs. The defendants also argued that the notices fulfilled the work location notice requirement by stating that the workers would be working in farms in North Carolina and providing the defendant's post office box number. The court held that, under Opinion Letter No. 1577 (WH-524), the location notice must include the number, street, city or town, county, and state of the farm where the work was to be performed—not to a business address or a post office box. The court held that the defendants' failure to include all of this information was a violation of the Act. The defendant argued that it complied with the requirement for a written notice of the wages to be paid by providing the recruits with a list of wages for the various types of work. The court found that the lists were confusing and inaccurate; therefore, the lists did not meet the requirement that each individual recruit be given written notice of the wages to be paid. Similar problems were found with the notices as to the date of work, type of work and types of crops involved and the court held that the written notices to the plaintiffs failed to meet the requirements of the Act. **Maximo Villalobos v. North Carolina Growers Association, 252 F. Supp.2d 1 (D. P.R. 2003)**.

OVERTIME. Summary by Roger A. McEowen. U.S. Dept. of Labor filed an enforcement action against N.C. Christmas tree growers seeking payment of back wages and to permanently enjoin the defendants from violating the Fair Labor Standards Act (FLSA). The growers had refused to pay their laborers overtime wages, arguing that the workers were agricultural laborers and were exempt as such from the overtime provisions of FLSA. The FLSA does not specifically mention Christmas tree farming, but the Dept. of Labor promulgated regulations excluding the growing and harvesting of Christmas trees from the definition of agriculture under the FLSA. The court held that the agency's regulations were entitled to deference because they were long standing and well-reasoned (even though the regulations were not promulgated after a notice and comment period required under the Administrative Procedures Act). Accordingly, the workers were not engaged in exempt agricultural labor and the defendants were subject to the overtime wage requirements of the FLSA. **Chao v. North Carolina Growers Assoc, et. al., No. 5:99-CV-7-V, 2003 U.S Dist. LEXIS 15833 (W.D. N.C. Sept. 4, 2003)**.

PRODUCTS LIABILITY

HERBICIDE. The plaintiff manufactured a pre-emergence herbicide for use on peanuts. The defendants were peanut growers who used the herbicide and experienced crop losses which they blamed on the failure of the herbicide to control weeds. The defendants filed claims for misrepresentation, false advertising, breach of warranty, and statutory claims for deceptive and fraudulent trade practices. The plaintiff filed an action for declaratory judgment that the defendants' claims were preempted by FIFRA. The defendants claimed that the plaintiff's agents made representations as to the effectiveness of the herbicide which were not included on the label but the court found that the defendants failed to provide any evidence of these additional representations. The court held that the defendants'

claims were preempted by FIFRA because the claims were based on information provided on the label. The court also held that the breach of warranty claims were limited by warranty restrictions on the labels which restricted all express and implied warranties to the limits of the label specifications. **Dow Agrosciences, LLC v. Bates, 332 F.3d 323 (5th Cir. 2003), *aff'g*, 205 F. Supp. 2d 623 (N.D. Tex. 2002)**.

The plaintiffs were peanut farmers who used a herbicide manufactured by the defendant on their peanut crops. The plaintiffs alleged that the herbicide caused damage to the crops, resulting in lower yields. Plaintiffs sued under Oklahoma law for negligence, violation of the Oklahoma Consumer Protection Act, breach of express and implied warranties, fraud and fraud in the inducement, estoppel and waiver, negligent representation, and strict liability. The plaintiffs claimed that the herbicide was not suitable for the alkaline soil of the plaintiffs' fields and the defendant should have provided information that the herbicide was not suitable for alkaline soils. The plaintiffs also claimed that, after the defendant learned about the problem, the defendant was negligent in stating that the crops would "grow out of it." The defendant argued that all but one of the plaintiffs was barred from the suit because they failed to provide notice to the Oklahoma Board of Agriculture as required by 2 Okla. Stat. § 3-82(H). The court held that the statute applied only to claims against licensed pesticide applicators, not pesticide manufacturers. The defendant also argued that the plaintiffs' claim were preempted by FIFRA. The court held that the plaintiffs' claims based on the failure to warn about the alkaline soil problem was preempted by FIFRA as affecting the information on the herbicide label. However, the claims based upon the period after discovery of the problem were not preempted by FIFRA because those claims were not based on the adequacy of the label. **Anderson v. Dow Agrosciences, LLC, 262 F. Supp.2d 1280 (W.D. Okla. 2003)**.

SECURED TRANSACTIONS

JOINT CHECKS. The plaintiff bank granted a line of credit to a farm partnership and the loan was secured by liens on the partnership's crops and agricultural subsidy payments. The partnership received 24 checks which were made out to the partnership and the plaintiff jointly. One of the partners indorsed the checks and deposited them in the partnership bank account without first obtaining the plaintiff's endorsement. The partner then withdrew the deposits and lost the money gambling. The plaintiff sued the cashing bank for conversion. The defendant presented evidence that the plaintiff continued to advance money to the partnership after learning about the misappropriation of the funds. The partnership was current on its loan payments to the plaintiff. However, the trial court awarded the plaintiff damages equal to the amount of the 24 checks. The defendant appealed, arguing that the plaintiff's damages were limited to the amount of loss arising from the improper cashing of the checks. The court noted that Ark. Code § 3-420(b) states that the defendant's liability is presumed to be the amount payable on the checks and held that this provision provides for a rebuttable presumption of the amount of damages. The court also noted that the defendant was alleging that the plaintiff had no loss because the partnership made payments on the loans with other money. The court stated that this defense raised the issue of imposition of the collateral source rule, which required that the payments to the plaintiff come from a wholly independent party before the plaintiff could ignore the benefits of the payments and obtain an additional recovery from the defendant. The court declined to hold as a matter of law that the partnership was wholly independent of the partner who improperly cashed the checks. The court noted that the partnership was a co-payee on the checks and was liable on the checks for the actions of its partner. Therefore, the damage award was reversed and the case remanded for a new trial. **American State Bank v. Union Planters Bank, 332 F.3d 533 (8th Cir. 2003)**.

CITATION UPDATES

68 Fed. Reg. 54336 (Sept. 17, 2003) (split-dollar insurance regulations) See p. 142 , *supra*.

In re Tomczyk, 295 B.R. 894 (Bankr. D. Minn. 2003) (bankruptcy exemption for earned income credit) see p. 67 *supra*.

IN THE NEWS

A new bill introduced Tuesday would make it unlawful for a packer with an annual slaughter capacity of more than 20 million swine to slaughter more than 10 million packer-owned swine in any calendar year. The separate legislation, introduced by Senator Chuck Grassley (R-IA), aims to set a ceiling on vertical integration in the pork industry. This legislation, he told reporters, becomes even more critical in the concentration debate because the pork industry is at an important juncture due to the impending sale of Farmland Foods, the company's pork division. Pork Powerhouses Cargill and Smithfield have both made bids for the company's pork assets as part of a bankruptcy auction. The senator said either we stop the trend toward vertical integration, or we prepare for what he called the "inevitable chickenization" of the pork industry. **AgricultureOnline.com**.

Sign-up for the sugar beet disaster aid program began September 15, 2003, and will run through October 31, 2003. The program, authorized by the Agricultural Assistance Act of 2003, will provide up to $60 million to producers who suffered sugar beet losses in either 2001 or 2002 due to a natural disaster. To be eligible, producers must have sustained at least a 35 percent loss in sugar beet production in either of the two crop years. Applicants with losses in both years will receive payments for the year when the larger loss occurred. **AgricultureOnline.com**.

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AGRICULTURAL TAX AND LAW SEMINARS

by Neil E. Harl and Roger A. McEowen

October 23, 2003: "Farm & Ranch Income Tax" by Neil E. Harl

October 24, 2003: "Farm & Ranch Estate and Business Planning" by Roger A. McEowen

Spa Resort, Palm Springs, CA

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